

William D. Wallace  
Counsel  
Regulatory Law  
Legal & External Affairs Department



Verizon Wireless  
1300 I Street, NW  
Suite 400 West  
Washington, DC 20005

Phone 202-589-3790  
Fax 202-589-3750  
Bill.Wallace@verizonwireless.com

May 2, 2008

BY ELECTRONIC FILING

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

RE: Notice of Written Ex Parte Presentation  
WT Docket No. 08-7

Dear Ms. Dortch:

Enclosed is a copy of a letter sent by Verizon Wireless to Representative Peter DeFazio in response to a letter dated March 14, 2008, that was sent by Rep. DeFazio and other Members of Congress to Chairman Martin in this proceeding. The attached letter reiterates Verizon Wireless' comments and reply comments in the above-referenced proceeding in opposition to proposals to regulate wireless messaging services and common short codes.

Pursuant to Section 1.1206(b)(1) of the Commission's Rules, a copy of this letter and the enclosure are being filed in the above-referenced docket through the Commission's Electronic Comment Filing System.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William D. Wallace", with a long horizontal flourish extending to the right.

William D. Wallace

Enclosure

cc: The Honorable Kevin Martin  
The Honorable Michael Copps  
The Honorable Jonathan Adelstein  
The Honorable Deborah Tate  
The Honorable Robert McDowell

**Howard Woolley**  
Senior Vice President  
Policy & Government Affairs



**Verizon Wireless**  
1300 Eye Street, N.W.  
Suite 400 West  
Washington, D.C. 20005

April 22, 2008

The Honorable Peter A. DeFazio  
2134 Rayburn HOB  
Washington, DC 20515

Dear Congressman DeFazio:

I am writing in response to your letter of March 14, 2008, to Federal Communications Commission Chairman Kevin Martin, in which you support the Petition of Public Knowledge et al. to declare text messaging services are Title II services subject to nondiscrimination obligations.

The Petition contains several factual and legal inaccuracies, and the unprecedented regulation it advocates would seriously undermine wireless companies' ability to protect their customers from spam and unwanted content. Let me explain our position on the issues raised in the Petition.

The Petition focuses on why the FCC should regulate wireless text messaging and use of "common short codes" as common carrier services, but it fails to present any facts or law that could justify such regulation.

With respect to text messaging, Verizon Wireless does not block text messages, except those addressed to its subscribers that are captured by its spam filters, or that are affirmatively selected for blocking by its subscribers – practices Petitioners do not complain about. There is thus no reason for the FCC to consider regulation of text messaging at all.

The Petition also seeks regulation of a product distinct from text messaging: provisioning of "common short codes." Short codes are abbreviated dialing codes that mobile content advertisers lease through an industry-wide system. Wireless carriers decide to accept short codes and facilitate the related promotional campaigns in accordance with policies that are designed to protect consumers from unlawful or unwanted content.

Short codes started as a form of advertising for mobile content, and are mostly used for game-show voting, sales of ringtones for wireless handsets, sports score and weather alerts, and the like. More recently, they have been employed to distribute messages for political and other advocacy campaigns. Short code campaigns use text messages as the communication path, but they are not the same as text messaging, that is, they are not

one-on-one communications. Once a subscriber signs up to receive messages from a short code sponsor, the sponsor may be sending out messages to multiple wireless devices at the same time. Also note, the content comes from the sponsor via text message; and so, short codes have nothing to do with access to the Internet or broadband services.

Given the potential uses of short codes, Verizon Wireless and other wireless carriers have a legitimate interest in ensuring that short codes are assigned and used appropriately, in order to make sure that our customers are not bombarded with spam or unwanted messages, and are not charged for messages without their prior consent. For each text message, whether to another consumer or a short code, a subscriber may incur a standard text message charge. In addition, premium charges are associated with receipt of content from certain short code campaigns and appear on wireless subscribers' bills, which means we must answer to our customers when things go wrong. For these reasons, we have listened to our customers who say they do not want unsolicited or inappropriate content, and messages that carry unauthorized charges. A policy was put in place to prevent such messages via short codes.

Verizon Wireless screens requests to activate short codes from content providers to ensure they meet its standards for content on its network. These content guidelines are consistent with the guidelines that other operators and mobile content providers developed for all wireless content, in part at the urging of the FCC, as well as groups concerned about adult content and the need to protect children from inappropriate material.

Pursuant to these guidelines, we have declined to approve short code campaigns that, for example, promote the use of alcohol, tobacco, drugs, or gambling, or contain excessively violent or sexual material. We have not activated short code campaigns when we found that the content provider was making available wallpaper with nude images, or ringtones that contained profanity or racial slurs. To address subscriber concern about premium charges, we generally limit campaigns we approve to \$9.99 subscription charges, and \$100 per month total, per subscriber, per short code campaign, and have, for example, declined to activate a campaign with \$29.99 per month subscription charge. The company also screens short code requests to ensure that customers will knowingly "opt in" to the campaign's services and that customers are aware of any premium charges they will incur as a result of opting in.

Grant of the Petition would undermine these policies by eliminating carrier review of short code campaigns. Under the regime advocated by Petitioners, third parties would have unrestrained access, and wireless operators would be prohibited from preventing ads promoting drugs, deceptive sweepstakes, or pornographic content, or from stopping harassing messaging campaigns or unsolicited messages from barraging their customers. Even if it involved no premium charges, a short code campaign could still easily relay information through text messages directing subscribers, including minors, to websites or other locations where inappropriate content can be found, or suggesting in text messages pursuit of unscrupulous activities.

Under the common carrier regime for text messaging and provisioning short codes, advocated by the Petition, wireless operators would also be unable to take the same steps to safeguard against *wireless spam* that they take today. The FCC has urged wireless operators to protect customers from unwanted text messages. Unwanted text messages can originate through short code campaigns as well as from the Internet. Grant of the Petition would be flatly at odds with the FCC's and operators' efforts to eliminate spam. There is absolutely no public policy reason to open the floodgates for spam – and every reason not to do so.

Petitioners are also wrong on the law governing text messaging and short codes. Under longstanding FCC precedent, text messaging is not “telecommunications” and is not subject to Title II common carrier regulation. The FCC thus cannot impose Title II nondiscrimination obligations on wireless operators' text messaging services. Moreover, even were text messaging a Title II service, the distinct provisioning of short codes to mobile content providers is not. A wireless operator's arrangements with a mobile content provider to deploy a short code is not a “service” subject to the Communications Act, and no “telecommunications” is involved. Short codes thus cannot be regulated under Title I or Title II of the Communications Act.

Petitioners argue that Title II obligations are needed to protect the speech of content providers using short codes. But, they have the First Amendment issue precisely backward: The non-discrimination duty they propose would undercut the free speech rights of wireless operators. By managing short code campaigns and reviewing the content that is made available to subscribers, wireless operators exercise editorial discretion by choosing to feature certain content, but not all content. In this respect, wireless operators are no different from any other “publisher” of content – a book or magazine publisher, a broadcast station or a newspaper – that determines what content it will accept. Under settled principles, these activities constitute expression protected by the First Amendment. Imposing a common carrier non-discrimination obligation would violate wireless operators' First Amendment rights.

Turning to the specific instances Petitioners cite, Verizon Wireless *never* denied NARAL Pro Choice America access to its text messaging service. The company initially declined to activate a common short code for NARAL. When NARAL wrote to Verizon Wireless' CEO, the company promptly reversed the decision on NARAL's short code request and activated the code.

Moreover, with regard to advocacy groups, Verizon Wireless' CEO wrote Chairman Dingell, confirming that the company “will provide ‘short code’ text message services to any group that is delivering legal content to customers who affirmatively indicate they desire to receive that content.” The bottom line is that Verizon Wireless immediately responded to the NARAL request, *without* regulation.

Verizon Wireless also does *not* deny text messaging services to Rebtel or its subscribers. Rebtel is a direct competitor to Verizon Wireless, offering an international

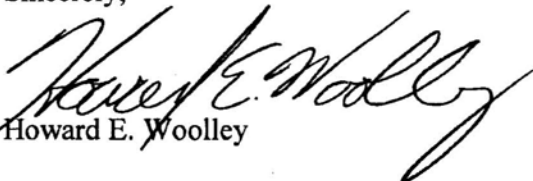
“dial-around” service bypassing U.S.-international calling rates. Verizon Wireless has declined to activate a common short code for Rebtel to promote its service to Verizon Wireless’ customers. That decision is absolutely justified. The United States has never forced businesses to allow competitors access to their property to advertise to their customers, nor could this be lawfully required.

Under the First Amendment principles noted above, the *New York Times* is not compelled to publish advertisements for the *New York Post*; CBS is not required to air ads for NBC; Google is not required to display banner ads from Yahoo; and American Airlines is not required to place ads from Delta on its aircraft. Wireless carriers have no fewer rights, and cannot be forced to transmit advertisements from their competitors over their networks.

Verizon Wireless is just as passionate about protecting speech, choice and innovation in wireless products and services as you and the Petitioners. However, we have seen the problems associated with text messaging and short code campaigns and are addressing them in a different way – a way that has proven effective and beneficial to consumers. Granting the Petition will erase those protections, without any of the benefits the Petitioners claim.

Accordingly, we respectfully ask that you reconsider your support for the Petition. The misguided regulation it requests is not only totally unwarranted but would in fact harm wireless consumers.

Sincerely,



Howard E. Woolley